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OFFICE OF PETITIONS

In re Application of :
Sevick-Muraca et al. : DECISION ON PETITION
Application No. 09/297,895 :
Filed: 30 June, 1999 :
Atty Docket No. 0017575.0678 :

This is a decision on the under 37 CFR 1.137(b),¹ filed on 6 July, 2005, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned on 8 June, 2002, for failure to file a timely reply to the final Office action mailed on 7 March, 2002, which set a three (3) month shortened statutory period for reply. No extensions of the time for reply were filed in

¹ Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

accordance with 37 CFR 1.136(a). Notice of Abandonment was mailed on 11 December, 2002.

Petitioners have filed an amendment after final rejection along with a Terminal Disclaimer.

As the examiner has now indicated that the reply filed on 6 July, 2005, places the application in *prima facie* condition for allowance if the Terminal Disclaimer is proper, the petition is granted.

Receipt of the Terminal Disclaimer filed on 6 July, 2005, is acknowledged. The Terminal Disclaimer has been entered in Office records.

The above-identified application has been abandoned for an extended period of time. The Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting the statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.²

Receipt of the revocation and power of attorney and change of correspondence address filed on 27 January, 2005, is acknowledged.

This application is being forwarded to Technology Center 2800 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3231.



Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

Encl: Notice Regarding Change of Power of Attorney
Notice of Acceptance of Power of Attorney

² See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109) (applicant obligated under 37 CFR 10.18 to inquire into the underlying facts and circumstances when providing the statement required by 37 CFR 1.137(b) to the Patent and Trademark Office).